

EXHIBIT “A”

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For All Purposes

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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

NOV 30 2023

STEPHANIE CAMERON, CLERK

By: Vanessa Munguia

CASE MANAGEMENT CONFERENCE

Hearing Date: 9/12/24
Time: 8:30AM
Department: 7

Attorneys for Plaintiffs,
JRYDEN LUKE FARRELL GARCIA, a minor, by and through his Guardian
Ad Litem, AMY SMITH, JESSE GARCIA, and
MONICA GARCIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TULARE

= **303817**

JRYDEN LUKE FARRELL GARCIA, a
minor, by and through his Guardian Ad Litem,
AMY SMITH;
JESSE GARCIA, SR.; and
MONICA GARCIA;

Plaintiffs,

vs.

COUNTY OF TULARE;
CITY OF TULARE;
DEPUTY TIMOTHY HOLDBROOK,
individually and in his official capacity as a
Deputy Sheriff for the Tulare County Sheriff's
Office;
DEPUTY ERIK OSUNA, individually and in
his official capacity as a Deputy Sheriff for the
Tulare County Sheriff's Office;
DEPUTY MONIQUE MENDOZA,
individually and in her official capacity as a
Deputy Sheriff for the Tulare County Sheriff's
Office;
CORPORAL VINCENT MEDINA,
individually and in his official capacity as a
Police Officer for the Tulare Police

Case No.

COMPLAINT FOR DAMAGES:

- 1.) Fourth Amendment-Detention and Arrest (42 U.S.C. §1983);
- 2.) Fourth Amendment-Excessive Force (42 U.S.C. §1983);
- 3.) Fourth Amendment-Denial of Medical Care (42 U.S.C. §1983);
- 4.) Substantive Due Process (42 U.S.C. §1983);
- 5.) Municipality Liability-Ratification (42 U.S.C. §1983);
- 6.) Municipal Liability-Inadequate Training (42 U.S.C. §1983);
- 7.) Municipal Liability-Unconstitutional Custom, Practice, or Policy (42 U.S.C. §1983);
- 8.) False Arrest/False Imprisonment
- 9.) Assault
- 10.) Battery (Wrongful Death)
- 11.) Negligence (Wrongful Death)
- 12.) Violation of Cal. Civil Code §52.1

COMPLAINT FOR DAMAGES

1 Department;
2 OFFICER MARISSA BOLANOS,
3 individually and in her official capacity as a
4 Police Officer for the Tulare Police
5 Department;
6 OFFICER ANDREA MERCADO,
7 individually and in her official capacity as a
8 Police Officer for the Tulare Police
9 Department;
10 OFFICER ALEXIS MACIAS, individually
11 and in her official capacity as a Police Officer
12 for the Tulare Police Department;
13 OFFICER JUSTIN HAMPTON, individually
14 and in his official capacity as a Police Officer
15 for the Tulare Police Department;
16 OFFICER DANIEL GREWE, individually
17 and in his official capacity as a Police Officer
18 for the Tulare Police Department;
19 JESSE JAKIN GARCIA, a minor, named
20 herein as a Nominal Defendant; and
21 DOES 1 through 100, inclusive,
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23 Defendants.
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COMPLAINT FOR DAMAGES

COMES NOW, Plaintiffs, JRYDEN LUKE FARRELL GARCIA, a minor, by and
through his Guardian Ad Litem, AMY SMITH, JESSE GARCIA, SR. and MONICA
GARCIA, individually and as successors-in-interest to Jesse Garcia, Jr., deceased, for their
Complaint for damages against Defendants, COUNTY OF TULARE; CITY OF TULARE;
DEPUTY TIMOTHY HOLDBROOK, individually and in his official capacity as a Deputy
Sheriff for the Tulare County Sheriff's Office; DEPUTY ERIK OSUNA, individually and in
his official capacity as a Deputy Sheriff for the Tulare County Sheriff's Office; DEPUTY
MONIQUE MENDOZA, individually and in her official capacity as a Deputy Sheriff for the
Tulare County Sheriff's Office; CORPORAL VINCENT MEDINA, individually and in his

1 official capacity as a Police Officer for the Tulare Police Department; OFFICER MARISSA
2 BOLANOS, individually and in her official capacity as a Police Officer for the Tulare Police
3 Department; OFFICER ANDREA MERCADO, individually and in her official capacity as a
4 Police Officer for the Tulare Police Department; OFFICER ALEXIS MACIAS, individually
5 and in her official capacity as a Police Officer for the Tulare Police Department; OFFICER
6 JUSTIN HAMPTON, individually and in his official capacity as a Police Officer for the Tulare
7 Police Department; OFFICER DANIEL GREWE, individually and in his official capacity as a
8 Police Officer for the Tulare Police Department; and alleges as follows:
9

10 **JURISDICTION AND VENUE**

11 1. This court has jurisdiction of this action, in that the amount in controversy
12 demanded by Plaintiffs exceeds \$25,000.00, and the events or omissions giving rise to the
13 Plaintiffs' claims and causes of action occurred within the State of California, County of
14 Tulare where the actions of the Defendants took place.
15

16 **INTRODUCTION**

17 2. This civil rights and state tort action seeks compensatory and punitive damages
18 from Defendants for violating various rights under the United States Constitution and state law
19 in connection with the fatal officer-shooting of Jesse Garcia, Jr. ("DECEDENT") on
20 December 1, 2022.

21 3. Plaintiffs timely filed and presented their claims to the public entities pursuant
22 to California Government Code §910, et seq. Plaintiffs presented their claims via personal
23 service on the City of Tulare and on the Clerk of the Board of Supervisors for Tulare County,
24 State of California on May 30, 2023. True and correct copies of Plaintiffs claim forms are
25 attached hereto and incorporated herein as Exhibits A and B.
26

27 4. The claim against the City of Tulare was rejected on June 20, 2023. A true and
28

1 correct copy of the NOTICE OF REJECTION OF CLAIM is attached hereto as Exhibit C.

2 5. The claim against the County of Tulare was rejected on June 27, 2023. A true
3 and correct copy of the COUNTY OF TULARE NOTICE OF REJECTION OF CLAIM is
4 attached hereto as Exhibit D.

5
6 **PARTIES**

7
8 6. At all relevant times, Decedent Jesse Garcia, Jr. ("DECEDENT") was an
9 individual residing in the City of Tulare, County of Tulare, State of California.

10 7. Plaintiff, JRYDEN LUKE FARRELL GARCIA, ("CHILD") a minor, by and
11 through his Guardian Ad Litem, AMY SMITH, is an individual residing in the City of Tulare,
12 County of Tulare, State of California and is the biological son of DECEDENT. CHILD sues
13 both in his individual capacity as the son of DECEDENT and in a representative capacity as a
14 successor-in-interest to DECEDENT pursuant to California Code of Civil Procedure §377.60.
15 CHILD seeks both survival and wrongful death damages under federal and state law.
16

17 8. Plaintiff, JESSE GARCIA, SR., ("FATHER") is an individual residing in the
18 City of Tulare, County of Tulare, State of California and is the biological father of
19 DECEDENT. FATHER sues both in his individual capacity as the father of DECEDENT and
20 in a representative capacity as a successor-in-interest to DECEDENT pursuant to California
21 Code of Civil Procedure §377.60. FATHER seeks both survival and wrongful death damages
22 under federal and state law.
23

24 9. Plaintiff, MONICA GARCIA, ("MOTHER") is an individual residing in the
25 City of Tulare, County of Tulare, State of California and is the biological mother of
26 DECEDENT. MOTHER sues both in her individual capacity as the mother of DECEDENT
27 and in a representative capacity as a successor-in-interest to DECEDENT pursuant to
28

1 California Code of Civil Procedure §377.60. MOTHER seeks both survival and wrongful
2 death damages under federal and state law.

3 10. At all relevant times, Defendant, COUNTY OF TULARE ("COUNTY") is and
4 was a municipal corporation existing under the laws of the State of California. COUNTY is a
5 chartered subdivision of the State of California with the capacity to be sued. COUNTY is
6 responsible for the actions, omissions, policies, procedures, practices, and customs of its
7 various agents and agencies, including the Tulare County Sheriff's Office ("TCSO") and its
8 agents and employees. At all relevant time, Defendant, COUNTY was responsible for
9 assuring that the actions, omissions, policies, procedures, practices, and customs of the TCSO
10 and its employees and agents complied with the laws of the United States and of the State of
11 California.
12

13 11. At all relevant times, Defendant, CITY OF TULARE ("CITY") is and was a
14 municipal corporation existing under the laws of the State of California. CITY is a chartered
15 subdivision of the State of California with the capacity to be sued. CITY is responsible for the
16 actions, omissions, policies, procedures, practices, and customs of its various agents and
17 agencies, including the Tulare Police Department ("TPD") and its agents and employees. At
18 all relevant time, Defendant, CITY was responsible for assuring that the actions, omissions,
19 policies, procedures, practices, and customs of the TPD and its employees and agents
20 complied with the laws of the United States and of the State of California.
21

22 12. Defendant, DEPUTY TIMOTHY HOLDBROOK ("HOLDBROOK") on
23 information and belief, is a Deputy Sheriff with the Tulare County Sheriff's Office.
24 HOLDBROOK is being sued both in his individual capacity and official capacity as a Deputy
25 Sheriff with the Tulare County Sheriff's Department.
26

27 13. Defendant, DEPUTY ERIK OSUNA ("OSUNA") on information and belief, is
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1 a Deputy Sheriff with the Tulare County Sheriff's Office. OSUNA is being sued both in his
2 individual capacity and official capacity as a Deputy Sheriff with the Tulare County Sheriff's
3 Department.

4 14. Defendant, DEPUTY MONIQUE MENDOZA ("MENDOZA") on information
5 and belief, is a Deputy Sheriff with the Tulare County Sheriff's Office. MENDOZA is being
6 sued both in her individual capacity and official capacity as a Deputy Sheriff with the Tulare
7 County Sheriff's Department.

8 15. Defendant, CORPORAL VINCENT MEDINA ("MEDINA") on information
9 and belief, is a Police Officer with the Tulare Police Department. MEDINA is being sued in
10 both his individual capacity and official capacity as a Police Officer with the Tulare Police
11 Department.

12 16. Defendant, OFFICER MARISSA BOLANOS ("BOLANOS") on information
13 and belief, is a Police Officer with the Tulare Police Department. BOLANOS is being sued in
14 both her individual capacity and official capacity as a Police Officer with the Tulare Police
15 Department.

16 17. Defendant, OFFICER ANDREA MERCADO ("MERCADO") on information
17 and belief, is a Police Officer with the Tulare Police Department. MERCADO is being sued
18 in both her individual capacity and official capacity as a Police Officer with the Tulare Police
19 Department.

20 18. Defendant, OFFICER ALEXIS MACIAS ("MACIAS") on information and
21 belief, is a Police Officer with the Tulare Police Department. MACIAS is being sued in both
22 her individual capacity and official capacity as a Police Officer with the Tulare Police
23 Department.

24 19. Defendant, OFFICER JUSTIN HAMPTON ("HAMPTON") on information
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1 and belief, is a Police Officer with the Tulare Police Department. HAMPTON is being sued in
2 both his individual capacity and official capacity as a Police Officer with the Tulare Police
3 Department.

4 20. Defendant, OFFICER DANIEL GREWE ("GREWE") on information and
5 belief, is a Police Officer with the Tulare Police Department. GREWE is being sued in both
6 his individual capacity and official capacity as a Police Officer with the Tulare Police
7 Department.
8

9 21. Defendant, JESSE JAKIN GARCIA, ("J. GARCIA") a minor, (DOB: 3-5-
10 2009) is an individual residing in the City of Tulare, County of Tulare, State of California and
11 is the biological son of DECEDENT. J. GARCIA is named herein as a Nominal Defendant.

12 22. The true names, capacities, and involvement, whether individual, corporate,
13 association or otherwise of Defendants DOES 1 through 100, inclusive, are unknown to
14 Plaintiffs, who otherwise sues these Defendants by such fictitious names. Plaintiff may seek
15 leave to amend this complaint to show the true names and capacity of these Defendants when
16 they have been ascertained and new information comes to light. Each of the fictitiously-
17 named Defendants is responsible in some manner for the conduct or liabilities alleged herein.
18

19 23. All named defendants herein, save and except for nominal defendant J.
20 GARCIA, but including all DOE defendants, are sometimes referred to herein collectively as
21 ("DEFENDANTS").
22

23 24. At all times mentioned herein, each and every DEFENDANT was the agent of
24 each and every other DEFENDANT and had the legal duty to oversee and supervise the
25 hiring, conduct, training, and employment of each and every DEFENDANT.

26 25. At all times mentioned herein, defendant COUNTY and TCSO was employer
27 and agent of each and every COUNTY and TCSO employee defendant and had the legal duty
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1 to oversee and supervise the hiring, conduct, training, and employment of each and every other
2 COUNTY and TCSO employee defendant.

3 26. At all times mentioned herein, defendant CITY and TPD was the employer and
4 agent of each and every CITY and TPD employee defendant and had a legal duty to oversee
5 and supervise the hiring, conduct, training, and employment of each and every other CITY and
6 TPD employee defendant.

7 27. All of the acts complained of herein by Plaintiffs against DEFENDANTS were
8 done and performed by said DEFENDANTS by and through their authorized agents, servants,
9 and/or employees, all of whom at all relevant times herein were acting within the course,
10 purpose, and scope of said agency, service, and/or employment capacity. Moreover,
11 DEFENDANTS and their agents ratified all of the acts complained of herein.
12

13 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

14 28. On or about December 1, 2022 at or near the intersection of W. Cartmill
15 Avenue and N. West Street, in the County of Tulare, DECEDENT was lawfully parked in a
16 Ford pickup truck, sitting in the driver's seat, sleeping, in or near an orchard, when he was
17 unlawfully detained, de-facto arrested, shot with a TASER (Tased), and shot multiple times by
18 multiple TCSO and TPD DEFENDANTS with their duty issued firearms, and wrongfully
19 killed by DEFENDANTS.
20

21 29. TCSO deputy HOLDBROOK was first on scene.

22 30. Defendant HOLDBROOK promptly realized that the white Ford truck was not
23 the stolen Chevy truck that he claims to have been looking for.
24

25 31. Defendant HOLDBROOK had no reasonable suspicion or probable cause that
26 any criminal activity was afoot related to DECEDENT or the white Ford truck.

27 32. Defendant HOLDBROOK nonetheless approached and detained DECEDENT.
28

1 33. Upon initial contact with DECEDENT, DEFENDANTS immediately detained
2 DECEDENT without reasonable suspicion, without probable cause, and without a warrant or
3 knowledge of a warrant.

4 34. DEFENDANTS' detention of DECEDENT turned into a prolonged detention
5 and de-facto arrest, without reasonable suspicion, without probable cause, and without a
6 warrant or knowledge of a warrant.

7 35. DEFENDANTS detained DECEDENT at gunpoint in violation of policy and
8 procedure.
9

10 36. DECEDENT was not free to leave.

11 37. Defendant MERCADO, a TPD officer, described DECEDENT Jesse Garcia Jr.
12 as "very passive but very uncooperative".

13 38. Defendant BOLANOS, a TPD officer also described DECEDENT Jesse Garcia
14 Jr. as "very passive, obviously he has the right hand covered, not attempting to move".
15

16 39. DEFENDANTS describe or admit that DECEDENT was passively non-
17 compliant.

18 40. DEFENDANTS failed to de-escalate the encounter with DECEDENT, in
19 violation of policy and procedure.

20 41. DEFENDANTS escalated the encounter with DECEDENT, in violation of
21 policy and procedure.

22 42. DEFENDANTS failed to call in for any mental health crisis intervention
23 support or backup.

24 43. DEFENDANTS failed to call in for any department or law enforcement
25 chaplain to assist in the matter.
26

27 44. It is the policy of DEFENDANTS and TPD that teams of handlers and police
28

1 canines meet and maintain the appropriate proficiency to effectively and reasonably carry out
2 legitimate law enforcement objectives.

3 45. DEFENDANTS and TPD had a duty and responsibility to PLAINTIFFS and
4 DECEDENT to fully and regularly train and supervise police canine units, including training
5 in police canine apprehension work utilizing a secure bite to apprehend or neutralize a suspect.

6 46. DEFENDANTS had a duty and responsibility to properly and thoroughly train
7 all police canine officers and canine units prior to utilizing any TPD police canine in the field.

8 47. DEFENDANTS, with deliberate indifference, breached such duty to train the
9 canine units.

10 48. DEFENDANTS, intentionally and with deliberate indifference, utilized an
11 unqualified deficient police canine unit in this incident.

12 49. Such police canine unit had multiple opportunities to apply a secure bite on
13 DECEDENT'S right arm to apprehend the passive DECEDENT and neutralize any perceived
14 threat.

15 50. Such police canine unit was so ill-trained that it entered DECEDENT'S vehicle
16 through the passenger doorway more than once, as many as three times, with direct access to
17 the passive DECEDENT'S right arm, with DECEDENT not reacting to or resisting the police
18 canine unit, yet the police canine officer failed in its duty to follow his handler's command and
19 apply a secure bite on the right arm of the passive DECEDENT to apprehend the passive
20 DECEDENT and neutralize any perceived threat.

21 51. The canine handler, defendant GREWE, gave multiple commands ("Packen"),
22 for the canine officer to attack or take hold of the passive DECEDENT with a secure bite, but
23 the canine officer failed to follow such commands on at least three attempts.

24 52. Each time the police canine was given a command, the police canine grossly
25

1 failed in its duties, directly and proximately causing and contributing to the damages alleged
2 herein.

3 53. The unconscionable conduct of the police canine unit, and failure to follow a
4 simple "Packen" bite command demonstrates a gross failure in canine training, ratification of
5 the lack of training, deliberate indifference to the lack of training, on the part of
6 DEFENDANTS.

7 54. The unconscionable conduct of the untrained, unqualified, deficient police
8 canine unit in this incident proximately caused and/or contributed to PLAINTIFFS' injuries,
9 damages, and to the injuries, damages, and death of DECEDENT.

11 55. At and near the point in time the police canine was entering and exiting the
12 FORD truck through the passenger doorway, while the passive DECEDENT was distracted,
13 DEFENDANTS, including HOLDBROOK and OSUNA had direct access, and hands on
14 contact with the passive DECEDENT but failed to take hands-on, non-lethal action to secure
15 and neutralize the passive DECEDENT.

17 56. After the police canine failed in its duties, defendant BOLANOS ran to the
18 female passenger and got a quick statement that DECEDENT had a small **unloaded** gun.

19 57. After being informed by the witness that DECEDENT had an **unloaded** gun
20 BOLANOS, failed to properly communicate to fellow DEFENDANTS that the gun was
21 **unloaded**. Such failure to accurately and completely radio the information unnecessarily
22 escalated the situation. Such failure to accurately and completely radio and convey such
23 critical information violated policy and procedure, was the result of DEFENDENTS' failure to
24 train, deliberate indifference, and proximately caused DECEDENT'S death and PLAINTIFFS'
25 injuries and damages.

27 58. TPD defendant BOLANOS radioed that DECEDENT Jesse Garcia Jr. "does
28

1 have a small 1032" which is a handgun.

2 59. TPD defendant BOLANOS failed to accurately radio that the small 1032 (gun)
3 was reportedly unloaded and that DECEDENT did not have any ammunition.

4 60. Corporal MEDINA repeated BOLANOS'S information "Did you copy that?
5 Possible 1032 (gun).

6 61. At that moment, when Corporal MEDINA said "Did you copy that? Possible
7 1032 (gun), passive DECEDENT Jesse Garcia Jr. stated "don't taser me dude" and "just don't
8 bro. I'll show you my right hand if you don't".
9

10 62. Defendant Deputy OSUNA then unnecessarily and drastically escalated the
11 situation at that moment, and shot DECEDENT with his duty issued TASER.

12 63. It was within 35 seconds of BOLANOS's initial radio dispatch regarding a
13 small 1032 (gun), with no escalating change in the passive DECEDENT'S behavior, despite
14 DECEDENT'S statement that he would comply and "I'll show you my right hand if you don't
15 [tase me]" DEFENDANTS unreasonably, unnecessarily, unlawfully, and against policy and
16 procedure, escalated the incident by shooting DECEDENT with OSUNA'S department issued
17 TASER.
18

19 64. Prior to being electronically TASED, the passive DECEDENT did not brandish
20 a gun, verbally threaten DEFENDANTS with a gun, or physically display a gun in any way to
21 threaten DEFENDANTS.

22 65. Pursuant to policy and procedure a TASER device should only be used when its
23 operator can safely approach the subject within the operational range of the device.
24

25 66. DEFENDANTS made contact with and stood within operational range of the
26 TASER device, just feet from DECEDENT for a significant period of time without verbal
27 threat, threat of escape, violence, or physical resistance by DECEDENT toward any
28

1 DEFENDANT.

2 67. DECEDENT remained passive, and did not demonstrate, by words or action, an
3 intention to be violent or to physically resist.

4 68. DEFENDANTS failed to call in any mental health support, or other
5 professionals to assist in de-escalating the situation.

6 69. DECEDENT stated he would show his right hand if they did not TASE him.

7 70. Nonetheless, against policy and procedure, DEFENDANTS, decided to,
8 instructed, ratified and did unnecessarily escalate the situation by deploying an electronic
9 weapon (TASER) upon DECEDENT against policy and procedure.

11 71. Such electronic weapon (TASER) was fired upon DECEDENT utilizing
12 electronic probes with the purpose, intent, and desire to affect neuromuscular incapacitation
13 (NMI) of DECEDENT.

14 72. Such electronic weapon (TASER) was fired upon DECEDENT and did in fact
15 cause the intended neuromuscular incapacitation (NMI) of DECEDENT.

16 73. Several DEFENDANTS admittedly witnessed the passive DECEDENT
17 physically "jolt" from being tased.

18 74. Immediately upon unnecessarily escalating the situation at the time by
19 deploying the electronic weapon (TASER) upon DECEDENT, and intentionally causing
20 DECEDENT'S neuromuscular incapacitation (NMI), DEFENDANTS shot and killed
21 DECEDENT.
22

23 75. Seven (7) of the DEFENDANTS, to wit: HOLDBROOK, MENDOZA,
24 MEDINA, BOLANOS, MERCADO, MACIAS, HAMPTON, (and unknown DOES)
25 immediately and instantly reacted to OSUNA firing his TASER upon DECEDENT, by
26 excessively shooting DECEDENT to death, by collectively firing as many as 71 rounds with
27

1 their duty issued firearms.

2 76. DECEDENT was shot, within about one (1) second, as he was actively being
3 tased.

4 77. The TASER was still shocking DECEDENT as he was shot and killed.

5 78. The TASER caused DECEDENT to "jolt" with neuromuscular incapacitation.

6 79. DEFENDANTS reacted to the TASER shot and DECEDENT'S neuromuscular
7 incapacitation by panicking and firing 71 bullets at the passive DECEDENT.
8

9 80. Within one (1) second of OSUNA firing his TASER upon the "passive"
10 DECEDENT, seven DEFENDANTS fired 71 bullets in less than seven seconds in reaction to
11 the TASER shot, to wit: HOLDBROOK, MENDOZA, MEDINA, BOLANOS, MERCADO,
12 MACIAS, HAMPTON.

13 81. DECEDENT, who was incapacitated by the TASER shock, did not "brandish"
14 a gun, and did not "point" a gun at any officer.
15

16 82. Any and all furtive movements, if any, by the passive DECEDENT, were
17 involuntary on the part of DECEDENT and caused by the shock and neuromuscular
18 incapacitation of being tased.

19 83. The use and deployment of the electronic weapon (TASER) proximately
20 caused the immediate shooting death of DECEDENT, and other damages.

21 84. The firing of the TASER, and the 71 bullets at the passive DECEDENT was
22 willful, intentional, unconscionable, unreasonable, reckless, with conscious disregard and
23 deliberate indifference in violation of Plaintiffs' and DECEDENT Jesse Garcia Jr.'s federal
24 and state Constitutional rights, and federal and state statutory rights.
25

26 85. Upon shooting DECEDENT, DEFENDANTS were more concerned with
27 confirming whether or not DECEDENT actually had a gun than they were about providing
28

1 immediate medical assistance to DECEDENT.

2 86. DEFENDANTS delayed in providing any medical assistance to DECEDENT.
3 Only after conducting a search for a gun did DEFENDANTS provide any medical assistance
4 to DECEDENT, after he was shot multiple times by DEFENDANTS.

5 87. The conduct of DEFENDANTS, and each of them, was a substantial factor in
6 causing DECEDENT'S and Plaintiffs' harm, losses, injuries, and damages.

7 **FIRST CAUSE OF ACTION**

8 **Fourth Amendment-Detention and Arrest (42 U.S.C. §1983)**

9 **(Against all DEFENDANTS)**

10
11 88. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
12 87 of this Complaint with the same force and effect as if fully set forth herein.

13 89. DEFENDANTS detained DECEDENT without reasonable suspicion and
14 arrested him without probable cause.

15 90. DEFENDANTS' prolonged detention amounted to a de-facto arrest without a
16 warrant and without probable cause.

17
18 91. DEFENDANTS searched and seized DECEDENT and DECEDENT'S vehicle
19 under color of authority, in the performance of their duties, without a warrant. DECENENT
20 was harmed and DEFENDANTS' unlawful search and seizure was a substantial factor in
21 causing DECEDENT'S and Plaintiffs' harm.

22 92. When DEFENDANTS shot DECEDENT, they violated DECEDENT'S rights
23 to be secure in his person against unreasonable searches and seizures as guaranteed to
24 DECEDENT under the Fourth Amendment to the United States Constitution and applied to
25 state actors for the Fourteenth Amendment.

26
27 93. The conduct of DEFENDANTS was willful, wanton, malicious,

1 unconscionable, and done with reckless disregard and deliberate indifference for the rights and
2 safety of DECEDENT and therefore warrants the imposition of exemplary and punitive
3 damages as to DEFENDANTS.

4 94. As a result of their misconduct, DEFENDANTS are liable for DECEDENT'S
5 injuries, either because they were integral participants in the wrongful detention and arrest, or
6 because they failed to intervene to prevent these violations.

7 95. Plaintiffs bring this cause of action as successors-in-interest to DECEDENT,
8 and seek both survival and wrongful death damages for the violation of DECEDENT'S rights.
9 Plaintiffs also seek attorney fees, including federal and state statutory attorney fees and civil
10 penalties.
11

12 **SECOND CAUSE OF ACTION**

13 **Fourth Amendment-Excessive Force (42 U.S.C. §1983)**

14 **(Against all DEFENDANTS)**

15 96. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
16 95 of this Complaint with the same force and effect as if fully set forth herein.

17 97. DEFENDANTS used excessive force against DECEDENT when they tased
18 him and when they shot him. DEFENDANTS' unjustified taser deployment and/or shooting
19 deprived DECEDENT of his rights to be secure in his person against unreasonable searches
20 and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States
21 Constitution and applied to state actors by the Fourteenth Amendment.
22

23 98. As a result of the foregoing, DECEDENT suffered great physical pain and
24 emotional distress up to the time of his death, loss of enjoyment of life, loss of life, and loss of
25 earning capacity.
26

27 99. The conduct of DEFENDANTS was willful, wanton, malicious,
28

1 unconscionable, and done with reckless disregard and deliberate indifference for the rights and
2 safety of DECEDENT, and therefore warrants the imposition of exemplary and punitive
3 damages as to DEFENDANTS.

4 100. The shooting was excessive, unreasonable and unconscionable, especially
5 because DECEDENT had just verbally stated his willingness to comply and show his hand
6 immediately prior to the TASER shot and posed no immediate threat of death or serious bodily
7 injury at the time of the TASER deployment and shooting. Further, DEFENDANTS' use of
8 deadly force violated their training and standard police training.
9

10 101. Plaintiffs bring this cause of action as successors-in-interest to the
11 DECEDENT, and seek both survival and wrongful death damages for the violation of
12 DECEDENT'S rights. Plaintiffs also seek attorney fees, including federal and state statutory
13 attorney fees and civil penalties.
14

15 **THIRD CAUSE OF ACTION**

16 **Fourth Amendment-Denial of Medical Care (42 U.S.C. §1983)**

17 **(Against all DEFENDANTS)**

18 102. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
19 101 of this Complaint with the same force and effect as if fully set forth herein.

20 103. The denial of medical care by DEFENDANTS deprived DECEDENT of his
21 right to be secure in his person against unreasonable searches and seizures as guaranteed to
22 DECEDENT under the Fourth Amendment to the United States Constitution and applied to
23 state actors by the Fourteenth Amendment.
24

25 104. As a result of the foregoing, DECEDENT suffered great physical pain and
26 emotional distress up to the time of his death, loss of enjoyment of life, loss of life and loss of
27 earning capacity.
28

1 105. DEFENDANTS knew that failure to provide timely medical treatment to
2 DECEDENT could result in further significant injury or the unnecessary and wanton infliction
3 of pain, but disregarded that serious medical need, causing DECEDENT great bodily harm and
4 death.

5 106. The conduct of DEFENDANTS was willful, wanton, malicious, and done with
6 reckless disregard for the rights and safety of DECEDENT and therefore warrants the
7 imposition of exemplary and punitive damages as to DEFENDANTS.
8

9 107. As a result of their misconduct, DEFENDANTS are liable for DECEDENT'S
10 injuries and harm, either because they were integral participants in the wrongful detention and
11 arrest, or because they failed to intervene to prevent these violations.

12 108. Plaintiffs bring this cause of action as successors-in-interest to the
13 DECEDENT, and seek both survival and wrongful death damages for the violation of
14 DECEDENT'S rights. Plaintiffs also seeks attorney fees including federal and state statutory
15 attorney fees and civil penalties.
16

17 **FOURTH CAUSE OF ACTION**

18 **Substantive Due Process (42 U.S.C. §1983)**

19 **(Against all DEFENDANTS)**

20 109. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
21 108 of this Complaint with the same force and effect as if fully set forth herein.

22 110. Plaintiffs have a cognizable interest under the Due Process Clause of the
23 Fourteenth Amendment of the United States Constitution to be free from state actions that
24 deprive them of life, liberty, or property in such a manner as to shock the conscience,
25 including, but not limited to unwarranted state interference in Plaintiffs familial relationship
26 with DECEDENT.
27

1 111. DECEDENT had a cognizable interest under the Due Process Clause of the
2 Fourteenth Amendment of the United States Constitution to be free from state actions that
3 deprive him of life, liberty, or property in such a manner as to shock the conscience.

4 112. The aforementioned actions of DEFENDANTS, along with other undiscovered
5 conduct, shock the conscience, in that they acted with callous disregard and deliberate
6 indifference to the constitutional rights of DECEDENT and Plaintiffs, and with purpose to
7 harm unrelated to any legitimate law enforcement objective.

8 113. As a direct and proximate result of these actions, DECEDENT experienced
9 pain and suffering and eventually died. DEFENDANTS thus violated the substantive due
10 process rights of Plaintiffs to be free from unwarranted interference with their familial
11 relationship with DECEDENT.

12 114. As a direct and proximate cause of the acts of DEFENDANTS, Plaintiffs
13 suffered emotional distress, mental anguish, and pain. Plaintiffs have also been deprived of
14 the lifelong love, companionship, comfort, support, society, care, and sustenance of
15 DECEDENT, and will continue to be so deprived for the remainder of their respective lives.

16 115. The conduct of DEFENDANTS was willful, wanton, malicious,
17 unconscionable and done with reckless disregard and deliberate indifference for the rights and
18 safety of DECEDENT and Plaintiffs and therefore warrants the imposition of exemplary and
19 punitive damages as to DEFENDANTS.

20 116. Plaintiffs bring this cause of action individually and as successors-in-interest to
21 DECEDENT, and seek both survival and wrongful death damages. Plaintiffs also seek
22 attorney fees including federal and state statutory attorney fees and civil penalties.
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FIFTH CAUSE OF ACTION

Municipal Liability-Ratification (42 U.S.C. §1983)

(Against Defendants CITY, COUNTY, [TPD & TCSO] and DOES)

117. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 116 of this Complaint with the same force and effect as if fully set forth herein.

118. DEFENDANTS, and each of them, acted under color of law.

119. The acts of DEFENDANTS deprived DECEDENT and Plaintiffs of their particular rights under the United States Constitution.

120. Upon information and belief, a final policymaker, acting under color of law, who had final policymaking authority concerning the acts of DEFENDANTS, ratified DEFENDANTS' acts and the bases for them. Upon information and belief, the unknown final policymaker(s) knew of and specifically approved of DEFENDANTS' acts and omissions.

121. Upon information and belief, a final policymaker(s) has determined (or will determine) that the acts of DEFENDANTS were "within policy."

122. By reason of the aforementioned acts and omissions, Plaintiffs have suffered loss of the love, companionship, affection, comfort, care, society, training, guidance, and past and future support of DECEDENT. The aforementioned acts and omissions also caused DECEDENT'S pain and suffering, loss of enjoyment of life, and death.

123. Accordingly, Defendants CITY, COUNTY [TPD and TCSO] and DOES each are liable to Plaintiffs for compensatory damages under 42 U.S.C. §1983.

124. Plaintiff brings this cause of action as a successor-in-interest to DECEDENT, and seeks both survival and wrongful death damages under this cause of action. Plaintiffs also seek attorney fees, including federal and state statutory attorney fees and civil penalties.

SIXTH CAUSE OF ACTION

Municipal Liability- Failure to Train (42 U.S.C. §1983)

(Against Defendants CITY, COUNTY, [TPD & TCSO] and DOES)

125. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 124 of this Complaint with the same force and effect as if fully set forth herein.

126. DEFENDANTS, and each of them, acted under color of law.

127. The acts of DEFENDANTS deprived DECEDENT and Plaintiffs of their particular rights under the United States Constitution.

128. The training policies of Defendants CITY, COUNTY [TPD & TCSO] and DOES were not adequate to train its officers to handle the usual and recurring situations with which they must deal.

129. Defendants CITY, COUNTY, [TPD & TCSO] and DOES were deliberately indifferent to the obvious consequences of its failure to train its officers adequately.

130. The failure of Defendants CITY, COUNTY [TPD & TCSO] and DOES to provide adequate training caused the deprivation of Plaintiffs' rights by DEFENDANTS; that is, DEFENDANTS' failure to train is so closely related to the deprivation of the Plaintiffs' rights as to be the moving force that caused the ultimate injury.

131. On information and belief, CITY, COUNTY, [TPD & TCSO] and DOES failed to train DEFENDANTS properly and adequately.

132. By reason of the aforementioned acts and omissions, Plaintiffs have suffered loss of the love, companionship, affection, comfort, care, society, training, guidance, and past and future support of DECEDENT.

133. Accordingly, Defendants CITY, COUNTY, [TPD & TCSO] and DOES each are liable to Plaintiffs for compensatory damages under 42 U.S.C. §1983.

134. Plaintiffs bring this cause of action as successors-in-interest to DECEDENT, and seek both survival and wrongful death damages under this cause of action. Plaintiffs also seek attorney fees under this cause of action, including federal and state statutory attorney fees and civil penalties.

SEVENTH CAUSE OF ACTION

Municipal Liability- Unconstitutional Custom or Policy (42 U.S.C. §1983)

(Against Defendants CITY, COUNTY, [TPD & TCSO] and DOES)

135. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 134 of this Complaint with the same force and effect as if fully set forth herein.

136. DEFENDANTS, and each of them, acted under color of law.

137. DEFENDANTS acted pursuant to an expressly adopted official policy or a longstanding practice or custom of the Defendant CITY, COUNTY, [TPD & TCSO] and DOES.

138. On information and belief, DEFENDANTS were not disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection with DECEDENT'S death.

139. Defendants, CITY, COUNTY, [TPD & TCSO] and DOES, together with other CITY, COUNTY, [TPD & TCSO] and DOE policy makers and supervisors, maintained, inter alia, the following unconstitutional customs, practices and policies:

- a. Using excessive force, including excessive deadly force;
- b. Failure to provide adequate training regarding the use of deadly force;
- c. Providing inadequate training regarding the use of force including deadly force;
- d. Failure to provide adequate training to police canines and canine handlers;

1 e. Utilization and deployment of police canines and canine teams,
2 including canine handlers, who lack proficiency.

3 f. Failure to provide adequate Conducted Energy Device training on the
4 appropriate use of TASER devices.

5 g. Employing and retaining as police officers, individuals such as
6 DEFENDANTS, whom Defendant CITY, COUNTY and DOES at all times material herein
7 knew or reasonably should have known had dangerous propensities for abusing their authority
8 and for using excessive force;
9

10 h. Inadequately supervising, training, controlling, assigning, and
11 disciplining CITY and COUNTY officers, and other personnel, including DEFENDANTS and
12 DOES, whom Defendant CITY, COUNTY and DOES knew or in the exercise of reasonable
13 care should have known had the aforementioned propensities and character traits;

14 i. Maintaining grossly inadequate procedures for reporting, supervising,
15 investigating, reviewing, disciplining and controlling misconduct by CITY and COUNTY
16 officers, deputies, and DOES;
17

18 j. Failing to adequately discipline CITY and COUNTY officers and
19 deputies, including DEFENDANTS, for the above-referenced categories or misconduct,
20 including "slaps on the wrist," discipline that is so slight as to be out of proportion to the
21 magnitude of the misconduct, and other inadequate discipline that is tantamount to
22 encouraging misconduct;
23

24 k. Encouraging, accommodating, or facilitating a "blue code of silence,"
25 "blue shield," "blue wall," "blue curtain," "blue veil," or simply "code of silence," pursuant to
26 which police officers do not report other officers' errors, misconduct, or crimes. Pursuant to
27 this code of silence, if questioned about an incident of misconduct involving another officer,
28

1 while following the code, the officer being questioned will claim ignorance of the other
2 officers' wrongdoing.

3 1. On information and belief, maintaining a policy of inaction and an
4 attitude of deliberate indifference towards soaring numbers of police SHOOTINGS and
5 beatings, including by failing to discipline, retrain, investigate, terminate, and recommend
6 officers for criminal prosecution who participate in SHOOTINGS and beatings of unarmed
7 people.
8

9 140. By reason of the aforementioned acts and omissions, Plaintiffs have suffered
10 loss of the love, companionship, affection, comfort, care, society, training, guidance, and past
11 and future support of DECEDENT. The aforementioned acts and omissions also caused
12 DECEDENT'S pain and suffering, loss of enjoyment of life, and death.

13 141. Defendants CITY, COUNTY [TPD & TCSO] and DOES, together with various
14 other officials whether named or unnamed, had either actual or constructive knowledge of the
15 deficient policies, practices and customs alleged in the paragraphs above. Despite having
16 knowledge as stated above, these defendants condoned, tolerated and through actions and
17 inactions thereby ratified such policies. Said defendants also acted with deliberate
18 indifference to the foreseeable effects and consequences of these policies with respect to the
19 constitutional rights of DECEDENT, Plaintiffs, and other individuals similarly situated.
20

21 142. By perpetrating, sanctioning, tolerating and ratifying the outrageous conduct
22 and other wrongful acts, CITY, COUNTY, [TPD & TCSO] and DOES acted with intentional,
23 reckless, and callous disregard for the life of DECEDENT and for DECEDENT'S and
24 Plaintiffs' constitutional rights. Furthermore, the policies, practices, and customs
25 implemented, maintained, and still tolerated by Defendants, CITY, COUNTY, [TPD &
26 TCSO] and DOES were affirmatively linked to and were a significantly influential force
27
28

1 behind the injuries of DECEDENT and Plaintiffs.

2 143. Accordingly, Defendants CITY, COUNTY, [TPD & TCSO] and DOES each
3 are liable to Plaintiff for compensatory damages under 42 U.S.C. §1983.

4 144. Plaintiffs bring this cause of action individually and as successors-in-interest to
5 DECEDENT, and seeks both survival and wrongful death damages under this cause of action.
6 Plaintiffs also seek attorney fees under this cause of action, including federal and state
7 statutory attorney fees and civil penalties.
8

9 **EIGHTH CAUSE OF ACTION**

10 **False Arrest/False Imprisonment**

11 **(Against all DEFENDANTS)**

12 145. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
13 144 of this Complaint with the same force and effect as if fully set forth herein.

14 146. DEFENDANTS, while working as officers for TPD and TCSO and acting
15 within the course and scope of their duties and employment, intentionally and unlawfully
16 arrested DECEDENT, and deprived DECEDENT of his freedom of movement by use of force,
17 threats of force, menace, fraud, deceit, and unreasonable duress. DEFENDANTS detained
18 DECEDENT without reasonable suspicion and arrested him without probable cause.
19

20 147. DECEDENT did not knowingly or voluntarily consent.

21 148. DEFENDANTS detained, restrained, and confined DECEDENT for an
22 appreciable amount of time, against DECEDENT'S will and in violation of his rights.
23

24 149. The conduct of the DEFENDANTS was a substantial factor in causing the
25 harm and damages to DECEDENT.

26 150. DEFENDANTS authorized, encouraged, directed, ratified, and/or assisted other
27 DEFENDANTS in doing the unlawful acts and omissions alleged herein, and procured
28

1 DECEDENT'S arrest without due process or probable cause.

2 151. Defendant CITY, COUNTY, [TPD & TCSO] and DOES are vicariously liable
3 for the wrongful acts of DEFENDANTS pursuant to section 815.2(a) of the California
4 Government Code, which provides that a public entity is liable for the injuries caused by its
5 employees within the scope of the employment if the employee's acts would subject him or
6 her to liability.

7 152. The conduct of DEFENDANTS was malicious, willful, wanton, oppressive,
8 unconscionable and accomplished with a conscious and callous disregard, and with deliberate
9 indifference for the rights of DECEDENT, entitling Plaintiffs to an award of exemplary and
10 punitive damages.

11 153. As a result of their misconduct, Defendants DOE OFFICERS are liable for
12 DECEDENT'S injuries, either because they were integral participants in the wrongful
13 detention and arrest, or because they failed to intervene to prevent these violations.

14 154. Plaintiffs bring this cause of action individually and as successors-in-interest to
15 DECEDENT, and seeks both survival and wrongful death damages under this cause of action.
16 Plaintiffs also seek attorney fees under this cause of action, including federal and state
17 statutory attorney fees and civil penalties.

18 **NINTH CAUSE OF ACTION**

19 **Assault**

20 **(Against all DEFENDANTS)**

21 155. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
22 154 of this Complaint with the same force and effect as if fully set forth herein.

23 156. DEFENDANTS actions, including but not necessarily limited to drawing their
24 TASER(S) and firearms and pointing them at DECEDENT for an appreciable amount of time.

1 157. DEFENDANTS' actions caused DECEDENT to reasonably believe that he was
2 about to be imminently touched in a harmful or offensive manner.

3 158. DECEDENT did not consent to DEFENDANTS' assaultive actions.

4 159. DECEDENT was harmed, injured, and damaged by such actions.

5 160. DEFENDANTS' actions and conduct were a substantial factor in causing
6 DECEDENT'S harm, injuries, and damages.

7 161. Plaintiffs bring this cause of action individually and as successors-in-interest to
8 DECEDENT, and seeks both survival and wrongful death damages under this cause of action.
9 Plaintiffs also seek attorney fees under this cause of action, including federal and state statutory
10 attorney fees and civil penalties.

11
12 **TENTH CAUSE OF ACTION**

13 **Battery (Wrongful Death)**

14 **(Against all DEFENDANTS)**

15
16 162. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
17 161 of this Complaint with the same force and effect as if fully set forth herein.

18 163. DEFENDANTS, while working as officers for the TPD and deputies for TCSO,
19 and acting within the course and scope of their duties, intentionally and unconscionably shot
20 DECEDENT multiple times, and used unreasonable and excessive force against him. As a result
21 of the actions of DEFENDANTS, DECEDENT suffered severe pain and suffering and ultimately
22 died from his injuries. DEFENDANTS had no legal justification for using the level of force
23 against DECEDENT that they used, and their use of force, including deadly force, while carrying
24 out their duties as police officers was an unreasonable and unprivileged use of force.

25 164. As a direct and proximate result of the conduct of DEFENDANTS as alleged
26 above, DECEDENT sustained injuries and died from his injuries and also lost his earning
27 capacity. As a direct and proximate result of the conduct of DEFENDANTS as alleged above,
28

1 DECEDENT suffered survival damages pursuant to Code of Civil Procedure §377.34.

2 165. CITY, COUNTY, [TPD & TCSO] and DOES are vicariously liable for the
3 wrongful acts of DEFENDANTS pursuant to section 815.2(a) of the California Government
4 Code, which provides that a public entity is liable for the injuries caused by its employees
5 within the scope of the employment if the employee's act would subject him or her to liability.

6 166. The conduct of DEFENDANTS was malicious, willful, wanton, oppressive,
7 and accomplished with a conscious disregard and deliberate indifference for the rights of
8 Plaintiffs and DECEDENT, entitling Plaintiffs, individually and as successors-in-interest to
9 DECEDENT, to an award of exemplary and punitive damages as to DEFENDANTS.

10 167. Plaintiffs bring this cause of action individually and as successors-in-interest to
11 DECEDENT, and seeks both survival and wrongful death damages under this cause of action.
12 Plaintiffs also seek attorney fees under this cause of action, including federal and state
13 statutory attorney fees and civil penalties.
14

15 **ELEVENTH CAUSE OF ACTION**

16 **Negligence (Wrongful Death)**

17 **(Against All DEFENDANTS)**

18 168. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through
19 167 of this Complaint with the same force and effect as if fully set forth herein.

20 169. Police officers, including DEFENDANTS, have a duty to use reasonable care
21 to prevent harm or injury to others. This duty includes using appropriate tactics, giving
22 appropriate commands, giving warnings, and not using any force unless necessary, using less
23 than lethal options, and only using deadly force as a last resort.

24 170. In doing the acts as alleged herein, DEFENDANTS were negligent in that they
25 had a legal duty to conform to a standard of conduct to protect DECEDENT of which
26

1 DEFENDANTS failed to do. DEFENDANTS' failure and breach of this duty was the
2 proximate cause of the resulting harm, personal injuries, damages, and wrongful death
3 suffered by DECEDENT.

4 171. Defendants breached this duty of care. Upon information and belief, the
5 actions and inactions of Defendants were negligent and reckless, including, but not limited to:

6 a. The failure to properly and adequately assess the need to detain, arrest,
7 and use force or deadly force against DECEDENT;

8 b. The negligent tactics and handling of the situation with DECEDENT,
9 including pre-shooting negligence;

10 c. The negligent detention, arrest, and use of force, including deadly force,
11 against DECEDENT;

12 d. The failure to provide prompt medical care to DECEDENT;

13 e. The failure to properly train and supervise employees, both professional
14 and non-professional, including DEFENDANTS and DOES;

15 f. The failure to ensure that adequate numbers of employees and/or
16 contractors with appropriate education and training were available to meet the needs of and
17 protect the rights of DECEDENT, including but not limited to, mental health, spiritual, and
18 crisis intervention professionals, officers, and/or counselors;

19 g. The negligent handling of evidence and witnesses; and

20 h. The negligent communication of information during the incident.

21 i. The negligent training of DEFENDANTS and DOES.

22 j. Defendants COUNTY, CITY, and DOES, and each of them, negligently
23 and intentionally failed to hire, instruct, supervise control, discipline and/or train its employees
24 and agents, including but not limited to police canine officers and units.
25
26
27
28

1 k. Defendants COUNTY, CITY, and DOES failed to adequately provide,
2 administer and monitor procedures regarding detentions, arrests, reporting, searches and
3 seizures, of suspects and witnesses, and use of TASERS, use of weapons, use of firearms, use
4 of force and/or use of deadly force.

5 172. As a direct and proximate result of DEFENDANTS' conduct as alleged above,
6 and other undiscovered negligent conduct, DECEDENT was caused to suffer severe pain and
7 suffering and ultimately died. Also, as a direct and proximate result of DEFENDANTS'
8 conduct as alleged above, Plaintiffs suffered emotional distress and mental anguish. Plaintiffs
9 also have been deprived of the life-long love, companionship, comfort, support, society, care
10 and sustenance of DECEDENT, and will continue to be so deprived for the remainder of their
11 natural lives.

12
13 173. CITY and COUNTY [TPD & TCSO] are vicariously liable for the wrongful
14 acts of DEFENDANTS and DOES pursuant to section 815.2(a) of the California Government
15 Code, which provides that a public entity is liable for the injuries caused by its employees
16 within the scope of the employment if the employee's act would subject him or her to liability.

17
18 174. In doing the acts as alleged herein, DEFENDANTS are presumed Negligent
19 Per Se in that they violated 42 U.S.C. §1983 and that this violation was a substantial factor in
20 bringing about the harm, personal injuries, damages, and wrongful death damages suffered by
21 DECEDENT and Plaintiffs.

22
23 175. Plaintiffs bring this cause of action individually and as successors-in-interest to
24 DECEDENT, and seeks both survival and wrongful death damages under this cause of action.
25 Plaintiffs also seek attorney fees under this cause of action, including federal and state
26 statutory attorney fees and civil penalties.

TWELVTH CAUSE OF ACTION

(Violation of Cal. Civil Code §52.1)

(Against All Defendants)

176. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 175 of this Complaint with the same force and effect as if fully set forth herein.

177. California Civil Code, Section 52.1 (the Bane Act), prohibits any person from using violent acts or threatening to commit violent acts in retaliation against another person for exercising that person's constitutional rights.

178. On information and belief, DEFENDANTS, while working for CITY and COUNTY and acting within the course and scope of their duties, authorized, encouraged, directed, assisted and/or intentionally committed and attempted to commit acts of violence against DECEDENT, including tasing and shooting DECEDENT without justification or excuse, by integrally participating and failing to intervene in the above violence, and by denying him immediate necessary medical care.

179. When DEFENDANTS tased and shot DECEDENT, they interfered with his civil rights to be free from unreasonable searches and seizures, to due process, to equal protection of the laws, to medical care, to be free from state actions that shock the conscience, and to life, liberty, and property.

180. On information and belief, Defendants intentionally and spitefully committed the above acts to discourage DECEDENT from exercising his civil rights, to retaliate against him for invoking such rights, or to prevent him from exercising such rights, which he was fully entitle to enjoy.

181. On information and belief, DECEDENT reasonably believed and understood that the violent acts committed by Defendants DOE OFFICERS were intended to discourage

1 him from exercising the above civil rights, to retaliate against him for invoking such rights, or
2 to prevent him from exercising such rights.

3 182. As such, DEFENDANTS successfully interfered with the above civil rights of
4 DECEDENT and Plaintiffs.

5 183. The conduct of Defendants was a substantial factor in causing Plaintiffs' harm,
6 losses, injuries, and damages.

7 184. CITY and COUNTY [TPD & TCSO] are vicariously liable for the wrongful
8 acts of DEFENDANTS, inclusive, pursuant to section 815.2(a) of the California Government
9 Code, which provides that a public entity is liable for the injuries caused by its employees
10 within the scope of the employment if the employee's act would subject him or her to liability.

11 185. DEFENDANTS and DOES are vicariously liable under California law and the
12 doctrine of *respondeat superior*.

13 186. The conduct of the DEFENDANTS was malicious, willful, wanton,
14 unconscionable, oppressive, and accomplished with the conscious disregard and deliberate
15 indifference for DECEDENT'S and Plaintiffs' rights, justifying an award of exemplary and
16 punitive damages as to DEFENDANTS.

17 187. Plaintiffs seek attorney fees under this cause of action including federal and
18 state statutory attorney fees and civil penalties.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs, JRYDEN LUKE FARRELL GARCIA, a minor, by and
21 through his Guardian Ad Litem, AMY SMITH, JESSE GARCIA, SR. and MONICA
22 GARCIA, individually and as successors-in-interest to Jesse Garcia, Jr., deceased, requests
23 entry of judgment in their favor and against DEFENDANTS, and each of them, as follows:
24

25 A. For general damages in an amount according to proof at trial;
26
27
28

1 B. For special damages in an amount according to proof at trial;

2 C. For compensatory damages in whatever amount may be proven at trial,
3 including both survival damages and wrongful death damages under federal and state law;

4 D. For noneconomic damages, including but not limited to, pain and suffering,
5 inconvenience, mental suffering, and emotional distress, in an amount according to proof at
6 trial;

7 E. For funeral and burial expenses, and loss of financial support;

8 F. For punitive and exemplary damages against the all DEFENDANTS except for
9 COUNTY and CITY, in an amount according to proof at trial;

10 G. For federal and state statutory damages;

11 H. For interest according to law;

12 I. For all loss of earnings and wages according to proof at trial;

13 J. For costs of suit;

14 K. For statutory attorneys' fees and cost under federal law, including but not
15 necessarily limited to 42 U.S.C. §1988, and the private attorney general doctrine, according to
16 proof;

17 L. For statutory attorneys' fees and costs under state law, including but not
18 necessarily limited to Civil Code §52(h) and (i) (The Tom Bane Civil Rights Act), and the
19 private attorney general doctrine, according to proof;

20 M. For civil penalties pursuant to §§52, 52.1(b) and (c) (The Tom Bane Civil
21 Rights Act); and,

22 ///


23 ///

24 ///

1 N. For such other and further relief as the Court may deem just and proper.
2
3

4 DATED: November 30, 2023

LAW OFFICE OF DEREK P. WISEHART

5 
6 _____
7 Derek P. Wischart, Attorney for Plaintiffs,
8 JRYDEN LUKE FARRELL GARCIA, a minor,
9 by and through his Guardian Ad Litem, AMY
10 SMITH, JESSE GARCIA, SR. and MONICA
11 GARCIA, individually and as successors-in-
12 interest to Jesse Garcia, Jr., deceased.
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County of Tulare



Clerk of the Board
Jason T. Britt
County Administrative Officer/
Clerk of the Board

TYPE OF DOCUMENT

- ☒ CLAIM
☐ MAP
☐ CHECK
☐ RESOLUTION
☐ AGREEMENT
☐ OTHER


DELIVERED:

DELIVERED BY Derek P. Wischert
CONTACT NAME Derek P. Wischert
PHONE NUMBER 559-636-9473
EMAIL derek@dwischertlaw.com
SIGNATURE [Signature]

FOR CLERK OF THE BOARD OFFICE USE ONLY

RECEIVED BY: Raquel Saldivar
NOTES: 5/30/2023

RECEIVED

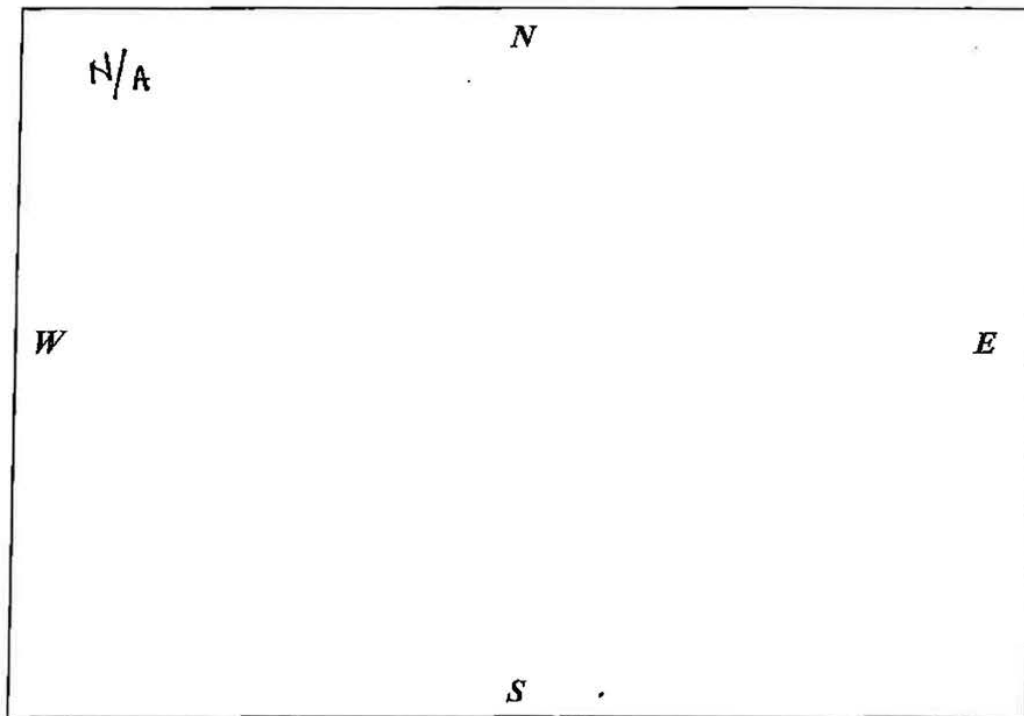
LIABILITY CLAIM REPORT Attach Additional Pages if Necessary		Mail Claim To: Clerk of the Board of Supervisors 2800 W. Burrel Ave. Visalia, CA 93291-4593	MAY 30 2023 TULARE COUNTY CLERK OF THE BOARD Clerk of the Board Stamp
CLAIMANT, NOTIFICATION AND GENERAL INFORMATION			
CLAIMANT FULL NAME: Estate of Jesse Garcia; Amy Smith OBO Jyden G. (minor); Jesse Garcia (Father); Monica Garcia (Mother)		CLAIMANT ADDRESS: 2330 W. Main St., Visalia, CA 93291	
PERSON TO BE NOTIFIED OF ANY ACTION TAKEN ON CLAIM: Derek P. Wischart, Esq.		NOTIFICATION ADDRESS (IF DIFFERENT THAN ABOVE):	
CLAIMANT DATE OF BIRTH (OPTIONAL):	MEDICARE BENEFICIARY (OPTIONAL): <input type="checkbox"/> YES <input type="checkbox"/> NO	EMAIL ADDRESS (OPTIONAL): derek@dwischartlaw.com	
DATE OF ACCIDENT/INCIDENT: 12/1/22	ACCIDENT/INCIDENT TIME: AM/PM:	CONTACT PHONE NUMBER(S): (559) 636-9473	
PLACE OR LOCATION OF ACCIDENT/INCIDENT (COMPLETE ADDRESS AND/OR FULL DESCRIPTION OF AREA): At or near W. Cartmill Ave. and N. West St.; City of Tulare, County of Tulare State of California			
LIABILITY			
DESCRIBE WHAT HAPPENED, WHY YOU FEEL THE COUNTY IS LIABLE AND NAMES OF ANY INVOLVED COUNTY EMPLOYEE(S): Tulare County Sheriff's Department and Tulare Police Department stopped, detained, tased, shot and killed decedent, Jesse Garcia in violation of his civil rights causing personal injury and death. *			
PROPERTY DAMAGE			
DESCRIBE PROPERTY DAMAGE CLAIMED, INCLUDING LOCATION, NATURE OF DAMAGE, CAUSE AND HOW VALUE IS CALCULATED: Multiple gun shot holes and related damages to pick-up truck			
PERSONAL INJURY			
STATE THE NATURE AND EXTENT OF CLAIMANT'S INJURY WHICH FORMS THE BASIS OF THIS CLAIM: Multiple gun shot wounds and death of Jesse Garcia. Decedent was attacked by a police canine. Decedent was tased. See Attachment. *			
AMOUNT OF CLAIM			
PROPERTY DAMAGE \$: Unknown	PERSONAL INJURY \$: Exceeds \$10,080	TOTAL \$ AMOUNT OF CLAIM: In excess of \$10,080	
WITNESSES			
NAME(S) / ADDRESS(ES) / CONTACT INFO.: - Tulare County Sheriff's Office and DOE Employees - Tulare County Police Department and DOE Employees - Unknown			
CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIMS OR MAKING FALSE STATEMENTS Every person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim is guilty of a felony. (See California Penal Code §72).		I DECLARE UNDER THE PENALTIES OF PERJURY OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS CORRECT AND THAT THE AMOUNT OF THIS CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT DESCRIBED ABOVE. <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> x  SIGNATURE OF CLAIMANT </div> <div style="text-align: center;"> 5/30/23 DATE </div> </div>	

* See attached Notice of Government Claim

Additional Remarks or Diagram - If additional space is needed, feel free to use the section below for further comments. If the claim involves a motor vehicle accident, please also provide a visual diagram.

See attached Notice of Government Claim.

DIAGRAM OF ACCIDENT / INTERSECTION / STREET NAMES: (Identifiers V1, V2, V3 etc.)



NOTICE TO CLAIMANT

**Claims must be signed by the property owner, injured party, or the person representing the claimant.
Any unsigned claim forms cannot be honored. See Government Code §910.2.**

The County of Tulare often needs the supporting evidence in order to evaluate your claim. Whether attached to the claim form or submitted subsequently, evidence supporting the amount claimed may include:

- For claims of damage to property which has been or can be repaired, submit an itemized estimate or statement of damages by a reliable repair shop of your choice, or if payment has been made, the itemized signed receipts evidencing repairs and payment. For lost property or property that cannot be economically restored, submit documentation of the original cost of the property, the date of purchase, and the value of the property before and after accident.
- For claims of bodily injury, personal injury or death, the claimant should submit documentation evidencing the degree of injuries sustained, diagnosis from medical providers and type of treatment obtained, including medical billing incurred. It is recommended that medical evidence **NOT** be attached to the claim form, but that such substantiation of damages be provided upon request. The Claim Form and attachments thereto is a public record and subject to public inspection.

Note: Medicare recipients seeking compensation for personal injuries or medical expenses may be required to provide their

Medicare Identification Number pursuant to 42 USC §1395y.

- If you are filing your tort claim after the six-month filing period, you must explain to the County your reason(s) for the delay. This is called an "Application for Leave to Present a Late Claim" (see Govt. Code section 911.4). There is no application form, therefore your application should be in the form of a letter with the proposed claim attached. The County shall consider the application in accordance with Government Code section 911.6, which lists legally acceptable reasons for filing a late claim. The County shall decide whether the application will be accepted. The County will consider the merits of the actual claim **only** if the "Application for Leave to Present a Late Claim" has been accepted.

The completed claim form and any supporting documentation needs to be mailed or delivered to the:

**Clerk of the Board of Supervisors
2800 W. Burrel Ave.
Visalia, CA 93291-4593**

WHAT HAPPENS NEXT?

Your claim will be investigated by Risk Management claims staff, and you should hear back on the status of your claim within 45 days of the presentation of your claim. Any questions should be directed to the County Counsel Risk Management Department at (559) 636-4950.

REGARDING INSURANCE COVERAGE (Optional)

So that a claim may be properly reviewed and evaluated by Risk Management, your insurance information may be helpful in securing the appropriate documentation that could assist us in the claims process regarding your loss or injury.

- HAVE YOU FILED A CLAIM WITH YOUR INSURANCE COMPANY? YES NO
- NAME OF YOUR INSURANCE COMPANY _____
- INSURANCE COMPANY CLAIM OR POLICY NO. ? _____
- REPRESENTATIVE NAME: _____
- CONTACT PHONE OR EMAIL INFORMATION: _____
- IF "YES", WHAT IS YOUR DEDUCTIBLE AMOUNT? _____

Derek P. Wischart, Esq. #178100
LAW OFFICES OF DEREK P. WISEHART
2330 W. Main Street
Visalia, CA 93291
Telephone: (559) 636-9473
Fax: (559) 636-9476

John K. Jackson, Esq. #172544
LAW OFFICES OF JOHN K. JACKSON
900 W. Main Street
Visalia, CA 93291
Telephone: (559) 713-1000
Fax: (559) 713-1422

Attorneys for Claimants,
ESTATE OF JESSE GARCIA, AMY SMITH, obo JRYDEN G., a minor,
JESSE GARCIA, and MONICA GARCIA

In Re the Claim of:

Case No:

ESTATE OF JESSE GARCIA;
AMY SMITH, obo JRYDEN G., a minor;
JESSE GARCIA; and,
MONICA GARCIA;

**NOTICE OF GOVERNMENT
CLAIM PURSUANT TO
GOVERNMENT CODE SECTION
910**

Claimants.

**WRONGFUL DEATH/
SURVIVAL ACTION**

TO: CITY OF TULARE; TULARE POLICE DEPARTMENT; TULARE POLICE
DEPARTMENT CHIEF OF POLICE; COUNTY OF TULARE; TULARE COUNTY
SHERIFF'S OFFICE; TULARE COUNTY SHERIFF; DOE EMPLOYEES 1-50 INCLUSIVE;
AND DOES 51-100, INCLUSIVE, hereinafter referred to collectively as "RESPONDENTS".

Claimants hereby make a claim against RESPONDENTS in an amount exceeding

1

NOTICE OF GOVERNMENT CLAIM PURSUANT
TO GOVERNMENT CODE SECTION 910

1 \$10,000.00 according to proof and makes the following statements in support of this claim.

2 1. THE NAME AND POST OFFICE ADDRESS OF THE CLAIMANT(S):

3 ESTATE OF JESSE GARCIA
4 AMY SMITH obo JRYDEN G., a minor;
5 JESSE GARCIA (Decedent's Father)
6 MONICA GARCIA (Decedent's Mother).
7 c/o
8 Derek P. Wischart, Esq.
9 LAW OFFICES OF DEREK P. WISEHART
10 2330 W. Main Street
11 Visalia, CA 93291

12 2. THE POST OFFICE ADDRESS TO WHICH THE PERSON PRESENTING
13 THE CLAIM DESIRES NOTICE TO BE SENT:

14 Derek P. Wischart, Esq.
15 LAW OFFICES OF DEREK P. WISEHART
16 2330 W. Main Street
17 Visalia, CA 93291

18 3. THE DATE, PLACE AND OTHER CIRCUMSTANCES OF THE
19 OCCURRENCE OR TRANSACTION WHICH GAVE RISE TO THE CLAIM ASSERTED:

20 a. On or about December 1, 2022 at or near the intersection of W. Cartmill Avenue
21 and N. West Street, in the City and County of Tulare, decedent JESSE GARCIA (hereinafter
22 referred to as "DECEDENT") was parked in a pickup truck in or near an orchard when he was
23 stopped, detained, tased, shot multiple times, and killed by RESPONDENTS.

24 After first being incapacitated by a Taser while sitting in his truck, DECEDENT was then
25 immediately and repeatedly shot at close range an unknown number of times by an unknown
26 number of RESPONDENT Police Officers and Sheriff's Deputies, one or more of which
repeatedly shot DECEDENT to the extent that such RESPONDENT shot/emptied his or her

1 entire clip of bullets until there were no more rounds left in the gun to shoot. Indeed, Claimants
2 are informed and believe that RESPONDENTS, collectively, fired possibly as many as several
3 dozen rounds of bullets at DECEDENT, all after DECEDENT had been incapacitated by the
4 application of a Taser.
5

6 b. In doing the acts as alleged above, RESPONDENTS intended to cause or place
7 DECEDENT in apprehension of a harmful or an offensive contact with his person. At no time
8 did DECEDENT consent to any of the acts of RESPONDENTS alleged above. As a proximate
9 result of the acts of RESPONDENTS as alleged, DECEDENT and Claimants were hurt and
10 injured in their health, strength, and activity sustaining injury to their nervous system and person,
11 all of which have caused, them mental, physical, and nervous pain and suffering, and wrongful
12 death damages. As a result of these injuries, they have suffered general damages, special
13 damages, and wrongful death damages. As a further proximate result of the acts of
14 RESPONDENTS, DECEDENT and Claimants have incurred unknown, medical, funeral, and
15 related expenses. The full amount of these expenses is not known at this time. The
16 aforementioned conduct of RESPONDENTS was willful and malicious and was intended to
17 oppress and cause injury and death to DECEDENT and subsequent damages to Claimants.
18
19

20 c. In doing the acts as alleged above, RESPONDENTS acted with the intent to, and
21 did in fact make offensive physical contact with DECEDENT'S person. At no time did
22 DECEDENT consent to any of the acts of RESPONDENTS alleged above. As a proximate
23 result of the acts of RESPONDENTS as alleged, DECEDENT and Claimants have been hurt and
24 injured in their health, strength, and activity sustaining injury to their nervous system and person,
25 all of which have caused, them mental, physical and nervous pain and suffering and wrongful
26

1 death damages. As a result of these injuries and wrongful death, DECEDENT and Claimants
2 have suffered damages. As a further proximate result of the acts of RESPONDENTS,
3 DECEDENT and Claimants have incurred, medical, funeral and related expenses. The full
4 amount of these expenses is not known at this time. The aforementioned conduct of
5 RESPONDENTS was willful and malicious and was intended to oppress and cause injury to
6 DECEDENT and subsequent damages to Claimants.
7

8 d. In doing the acts as alleged above RESPONDENTS engaged in outrageous
9 conduct as set forth herein. RESPONDENTS' conduct was intentional and malicious and done
10 for the purpose of causing DECEDENT to suffer humiliation, mental anguish, fear for his life,
11 and emotional and physical distress. RESPONDENTS' conduct was done with knowledge that
12 DECEDENT'S emotional and physical distress would thereby increase, and was done with a
13 willful, wanton, and reckless disregard of the consequences to DECEDENT and Claimants. As
14 the proximate result of the acts alleged above, DECEDENT suffered humiliation, mental
15 anguish, and emotional and physical distress, and death. The aforementioned conduct of
16 RESPONDENTS was willful and malicious and was intended to oppress and cause injury to
17 DECEDENT and subsequent damages to Claimants.
18

19 e. In doing the acts as alleged above RESPONDENTS violated the civil rights of
20 DECEDENT in that RESPONDENTS intentionally violated DECEDENT'S Fourth Amendment
21 rights employing unreasonable and excessive force under the circumstances. RESPONDENTS
22 were at all times herein mentioned acting under color of state law and were acting and/or
23 purporting to act in the performance of their official duties. As a proximate result of
24 RESPONDENTS' actions DECEDENT and Claimants have suffered personal injuries, damages,
25
26

1 and wrongful death damages as stated herein. In acting as alleged above RESPONDENTS acted
2 knowingly, willfully and maliciously, and with reckless and callous disregard for DECEDENT'S
3 State and federally protected rights.

4 f. In doing the acts as alleged above RESPONDENTS are presumed Negligent Per
5 Se in that they violated 42 U.S.C. Section 1983 and that this violation was a substantial factor in
6 bringing about the harm, personal injuries, damages, and wrongful death damages suffered by
7 DECEDENT and Claimants.

9 g. In doing the acts as alleged above RESPONDENTS were negligent in that
10 RESPONDENTS had a legal duty to conform to a standard of conduct to protect DECEDENT of
11 which RESPONDENTS failed to do. RESPONDENTS' failure was the proximate cause of the
12 resulting personal injuries, damages, and wrongful death suffered by DECEDENT.

14 h. CITY OF TULARE, TULARE POLICE DEPARTMENT, TULARE POLICE
15 DEPARTMENT CHIEF OF POLICE, COUNTY OF TULARE, TULARE COUNTY SHERIFF,
16 DOE EMPLOYEES 1-50, and each of them, negligently and intentionally failed to hire, instruct,
17 supervise, control, discipline and/or train its employees and agents, including but not limited to
18 Police canine dog and/or Sheriff's canine dog, DOE EMPLOYEES, and DOES. Additionally,
19 RESPONDENTS failed to adequately provide, administer and monitor procedures regarding
20 detentions, arrests, reporting, searches and seizures, of suspects and witnesses, and use of
21 Taser's, use of weapons, use of firearms, use of force and/or use of deadly force.
22 RESPONDENTS failed to conduct a reasonable and adequate investigation into this matter.
23 RESPONDENTS have violated a statute, ordinance, or regulation of a public entity including but
24 not limited to Federal and State Constitutional Law, CA Penal Code, CA Government Code, and
25
26

1 42 U.S.C. §1983.

2 i. RESPONDENTS, and each of them, intentionally and unlawfully, by means of
3 force, excessive force, deadly force, duress, menace, threats, and use of official authority,
4 restrained, detained, arrested, and/or utilized excessive and deadly force upon DECEDENT
5 without necessity or justification. DECEDENT was restrained, detained, arrested, and confined
6 for an appreciable amount of time, tased and shot multiple times against his will, proximately
7 causing the death of DECEDENT and subsequent damages to Claimants.
8

9 4. GENERAL DESCRIPTION OF THE INDEBTEDNESS OBLIGATION,
10 INJURY, DAMAGE OR LOSS AS FAR AS KNOWN AT TIME OF PRESENTATION;
11

12 a. As to Claimants and DECEDENT, damages include, but are not limited to
13 the following:

- 14 1. Wrongful Death of Jesse Garcia;
- 15 2. Survival Action;
- 16 3. Violation of Civil Rights;
- 17 4. Personal Injuries;
- 18 5. Emotional Distress;
- 19 6. General Damages;
- 20 7. Special Damages;
- 21 8. Economic Damages;
- 22 9. Non-Economic Damages;
- 23 10. Punitive Damages; and
- 24 11. Attorney fees and costs.

26 6

NOTICE OF GOVERNMENT CLAIM PURSUANT
TO GOVERNMENT CODE SECTION 910

1 5. NAME OR NAMES OF PUBLIC EMPLOYEES CAUSING THE INJURY OR
2 LOSS, IF KNOWN:

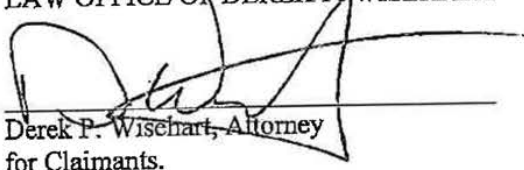
3 RESPONDENTS; and DOE EMPLOYEES 1 through 50, inclusive.

4 6. AMOUNT CLAIMED AS OF DATE OF PRESENTATION OF CLAIM:

5 Amount claimed exceeds \$10,000.00. This is not a limited civil case. Jurisdiction is in
6 the Tulare County Superior Court.
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9
10 Dated: May 30, 2023

LAW OFFICE OF DEREK P. WISEHART


Derek P. Wischart, Attorney
for Claimants.

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NOTICE OF GOVERNMENT CLAIM PURSUANT
TO GOVERNMENT CODE SECTION 910

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF TULARE

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 2330 W. Main Street, Visalia, California 93291.

On May 30, 2023, I served the foregoing **LIABILITY CLAIM FORM** on all interested parties, by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

Clerk of the Board of Supervisors
2800 W. Burrel Ave.
Visalia, CA 93291

☒ **By Personal Service** - I delivered such envelope by hand to the addressee.

☐ **By Mail** - I deposited such envelope with the United States Postal Service, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Visalia, California. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **By Express Service Carrier** - I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents in an envelope designated by the said express carrier, with delivery fees paid or provided for.

☐ **By Facsimile** - I transmitted from a facsimile transmission machine whose telephone number is 559/636-9476, the afore-described document(s), and a copy of this declaration to the above interested parties at the listed facsimile transmission telephone number.

☐ **By Electronic Service:** I sent the afore-described document(s) from email address dnorys@dwiseshartlaw.com to the person(s) at the email addresses listed above. I did not receive within a reasonable time after transmission any electronic message or other indication that the transmission was unsuccessful.

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 30, 2023, at Visalia, California.

~~Derek P. Wisehart, Esq.~~

HUMAN RESOURCES

MAY 30 2023

RECEIVED

CITY OF TULARE
CLAIM FORM

Return completed form to: Risk Management
City of Tulare
411 E. Kern Avenue
Tulare, CA 93274
(559) 684-4202



(Please Type Or Print)

CLAIM AGAINST City of Tulare; Tulare Police Department; DOE Employees 1-50

(Name of Entity)
Estate of Jesse Garcia; Amy Smith OBO Jyden G. aminor;
Claimant's name: Jesse Garcia (Father); Monica Garcia (Mother)

SS#: _____ DOB: _____ Gender: Male _____ Female _____

Claimant's address: 2330 W. Main St., Visalia CA 93291 Telephone: (559) 636-9473

Address where notices about claim are to be sent, if different from above: _____

2330 W. Main St., Visalia, CA 93291Date of incident/accident: 12/1/22Date injuries, damages, or losses were discovered: 12/1/22Location of incident/accident: At or near W. Cartmill Ave. and N. West St., City of Tulare, County of Tulare, State of California

What did entity or employee do to cause this loss, damage, or injury? Stopped, detained, tased, shot and killed decedent, Jesse Garcia in violation of his civil rights causing personal injuries and deaths *
(Use back of this form or separate sheet if necessary to answer this question in detail.)

What are the names of the entity's employees who caused this injury, damage, or loss (if known)? City of Tulare; Tulare Police Department and DOE Employees; Tulare County Sheriff's Department and DOE Employees

What specific injuries, damages, or losses did claimant receive? Personal Injuries, Death, Survival Action *
(Use back of this form or separate sheet if necessary to answer this question in detail.)

What amount of money is claimant seeking or, if the amount is in excess of \$10,000, which is the appropriate court of jurisdiction. Note: If Superior and Municipal Courts are consolidated, you must represent whether it is a "limited civil case" [see Government Code 910(f)].

This is an unlimited civil case exceeding \$10,000.

How was this amount calculated (please itemize)? Wrongful death of Decedent, Jesse Garcia in violation of his civil rights *
(Use back of this form or separate sheet if necessary to answer this question in detail.)

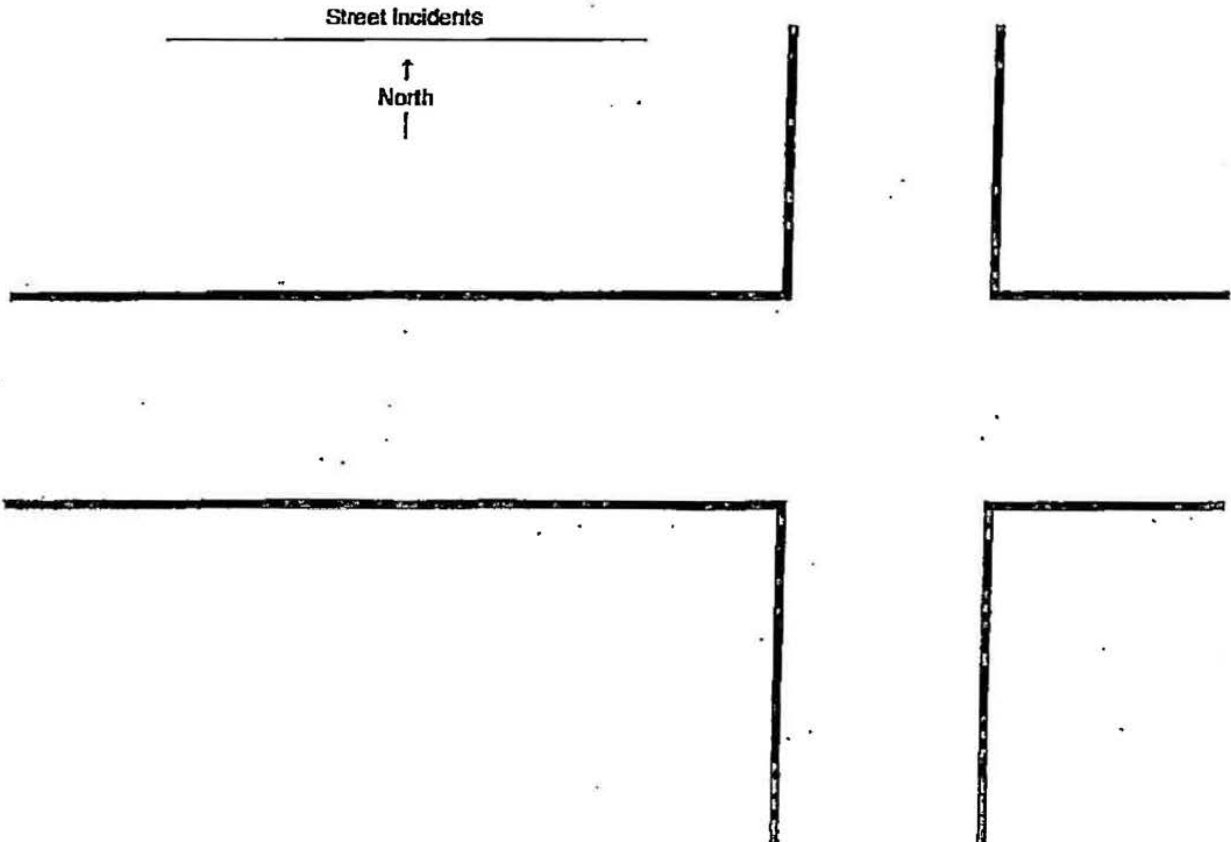
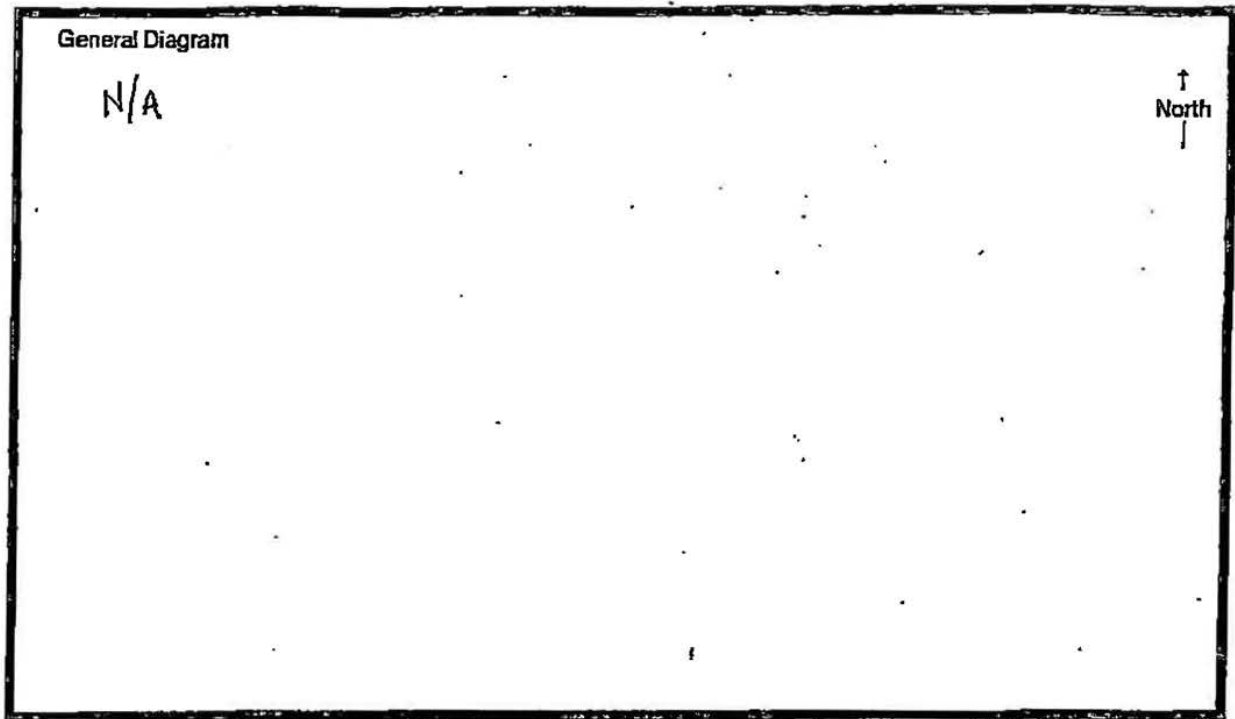
Date Signed: 5/30/23Signature: [Signature]

If signed by representative:

Representative's Name Derek P. Wischert Address 2330 W. Main St., Visalia, CA 93291Telephone # (559) 636-9473Relationship to Claimant Attorney

* See attached Notice of Government Claim.

DIAGRAMS



Derek P. Wischart, Esq. #178100
LAW OFFICES OF DEREK P. WISEHART
2330 W. Main Street
Visalia, CA 93291
Telephone: (559) 636-9473
Fax: (559) 636-9476

John K. Jackson, Esq. #172544
LAW OFFICES OF JOHN K. JACKSON
900 W. Main Street
Visalia, CA 93291
Telephone: (559) 713-1000
Fax: (559) 713-1422

Attorneys for Claimants,
ESTATE OF JESSE GARCIA, AMY SMITH, obo JRYDEN G., a minor,
JESSE GARCIA, and MONICA GARCIA

In Re the Claim of:)	Case No:
)	
)	NOTICE OF GOVERNMENT
ESTATE OF JESSE GARCIA;)	CLAIM PURSUANT TO
AMY SMITH, obo JRYDEN G., a minor;)	GOVERNMENT CODE SECTION
JESSE GARCIA; and,)	910
MONICA GARCIA;)	
)	WRONGFUL DEATH/
Claimants.)	SURVIVAL ACTION
)	

TO: CITY OF TULARE; TULARE POLICE DEPARTMENT; TULARE POLICE
DEPARTMENT CHIEF OF POLICE; COUNTY OF TULARE; TULARE COUNTY
SHERIFF'S OFFICE; TULARE COUNTY SHERIFF; DOE EMPLOYEES 1-50 INCLUSIVE;
AND DOES 51-100, INCLUSIVE, hereinafter referred to collectively as "RESPONDENTS".

Claimants hereby make a claim against RESPONDENTS in an amount exceeding

1

NOTICE OF GOVERNMENT CLAIM PURSUANT
TO GOVERNMENT CODE SECTION 910

1 \$10,000.00 according to proof and makes the following statements in support of this claim.

2 1. THE NAME AND POST OFFICE ADDRESS OF THE CLAIMANT(S):

3 ESTATE OF JESSE GARCIA
4 AMY SMITH obo JRYDEN G., a minor;
5 JESSE GARCIA (Decedent's Father)
6 MONICA GARCIA (Decedent's Mother).
7 c/o
8 Derek P. Wischart, Esq.
9 LAW OFFICES OF DEREK P. WISEHART
10 2330 W. Main Street
11 Visalia, CA 93291

12 2. THE POST OFFICE ADDRESS TO WHICH THE PERSON PRESENTING
13 THE CLAIM DESIRES NOTICE TO BE SENT:

14 Derek P. Wischart, Esq.
15 LAW OFFICES OF DEREK P. WISEHART
16 2330 W. Main Street
17 Visalia, CA 93291

18 3. THE DATE, PLACE AND OTHER CIRCUMSTANCES OF THE
19 OCCURRENCE OR TRANSACTION WHICH GAVE RISE TO THE CLAIM ASSERTED:

20 a. On or about December 1, 2022 at or near the intersection of W. Cartmill Avenue
21 and N. West Street, in the City and County of Tulare, decedent JESSE GARCIA (hereinafter
22 referred to as "DECEDENT") was parked in a pickup truck in or near an orchard when he was
23 stopped, detained, tased, shot multiple times, and killed by RESPONDENTS.

24 After first being incapacitated by a Taser while sitting in his truck, DECEDENT was then
25 immediately and repeatedly shot at close range an unknown number of times by an unknown
26 number of RESPONDENT Police Officers and Sheriff's Deputies, one or more of which
repeatedly shot DECEDENT to the extent that such RESPONDENT shot/emptied his or her

1 entire clip of bullets until there were no more rounds left in the gun to shoot. Indeed, Claimants
2 are informed and believe that RESPONDENTS, collectively, fired possibly as many as several
3 dozen rounds of bullets at DECEDENT, all after DECEDENT had been incapacitated by the
4 application of a Taser.

5
6 b. In doing the acts as alleged above, RESPONDENTS intended to cause or place
7 DECEDENT in apprehension of a harmful or an offensive contact with his person. At no time
8 did DECEDENT consent to any of the acts of RESPONDENTS alleged above. As a proximate
9 result of the acts of RESPONDENTS as alleged, DECEDENT and Claimants were hurt and
10 injured in their health, strength, and activity sustaining injury to their nervous system and person,
11 all of which have caused, them mental, physical, and nervous pain and suffering, and wrongful
12 death damages. As a result of these injuries, they have suffered general damages, special
13 damages, and wrongful death damages. As a further proximate result of the acts of
14 RESPONDENTS, DECEDENT and Claimants have incurred unknown, medical, funeral, and
15 related expenses. The full amount of these expenses is not known at this time. The
16 aforementioned conduct of RESPONDENTS was willful and malicious and was intended to
17 oppress and cause injury and death to DECEDENT and subsequent damages to Claimants.
18

19
20 c. In doing the acts as alleged above, RESPONDENTS acted with the intent to, and
21 did in fact make offensive physical contact with DECEDENT'S person. At no time did
22 DECEDENT consent to any of the acts of RESPONDENTS alleged above. As a proximate
23 result of the acts of RESPONDENTS as alleged, DECEDENT and Claimants have been hurt and
24 injured in their health, strength, and activity sustaining injury to their nervous system and person,
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1 death damages. As a result of these injuries and wrongful death, DECEDENT and Claimants
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5 RESPONDENTS was willful and malicious and was intended to oppress and cause injury to
6 DECEDENT and subsequent damages to Claimants.
7

8 d. In doing the acts as alleged above RESPONDENTS engaged in outrageous
9 conduct as set forth herein. RESPONDENTS' conduct was intentional and malicious and done
10 for the purpose of causing DECEDENT to suffer humiliation, mental anguish, fear for his life,
11 and emotional and physical distress. RESPONDENTS' conduct was done with knowledge that
12 DECEDENT'S emotional and physical distress would thereby increase, and was done with a
13 willful, wanton, and reckless disregard of the consequences to DECEDENT and Claimants. As
14 the proximate result of the acts alleged above, DECEDENT suffered humiliation, mental
15 anguish, and emotional and physical distress, and death. The aforementioned conduct of
16 RESPONDENTS was willful and malicious and was intended to oppress and cause injury to
17 DECEDENT and subsequent damages to Claimants.
18

19 e. In doing the acts as alleged above RESPONDENTS violated the civil rights of
20 DECEDENT in that RESPONDENTS intentionally violated DECEDENT'S Fourth Amendment
21 rights employing unreasonable and excessive force under the circumstances. RESPONDENTS
22 were at all times herein mentioned acting under color of state law and were acting and/or
23 purporting to act in the performance of their official duties. As a proximate result of
24 RESPONDENTS' actions DECEDENT and Claimants have suffered personal injuries, damages,
25
26

1 and wrongful death damages as stated herein. In acting as alleged above RESPONDENTS acted
2 knowingly, willfully and maliciously, and with reckless and callous disregard for DECEDENT'S
3 State and federally protected rights.

4 f. In doing the acts as alleged above RESPONDENTS are presumed Negligent Per
5 Se in that they violated 42 U.S.C. Section 1983 and that this violation was a substantial factor in
6 bringing about the harm, personal injuries, damages, and wrongful death damages suffered by
7 DECEDENT and Claimants.

8 g. In doing the acts as alleged above RESPONDENTS were negligent in that
9 RESPONDENTS had a legal duty to conform to a standard of conduct to protect DECEDENT of
10 which RESPONDENTS failed to do. RESPONDENTS' failure was the proximate cause of the
11 resulting personal injuries, damages, and wrongful death suffered by DECEDENT.
12

13 h. CITY OF TULARE, TULARE POLICE DEPARTMENT, TULARE POLICE
14 DEPARTMENT CHIEF OF POLICE, COUNTY OF TULARE, TULARE COUNTY SHERIFF,
15 DOE EMPLOYEES 1-50, and each of them, negligently and intentionally failed to hire, instruct,
16 supervise, control, discipline and/or train its employees and agents, including but not limited to
17 Police canine dog and/or Sheriff's canine dog, DOE EMPLOYEES, and DOES. Additionally,
18 RESPONDENTS failed to adequately provide, administer and monitor procedures regarding
19 detentions, arrests, reporting, searches and seizures, of suspects and witnesses, and use of
20 Taser's, use of weapons, use of firearms, use of force and/or use of deadly force.

21 RESPONDENTS failed to conduct a reasonable and adequate investigation into this matter.
22 RESPONDENTS have violated a statute, ordinance, or regulation of a public entity including but
23 not limited to Federal and State Constitutional Law, CA Penal Code, CA Government Code, and
24
25
26

1 42 U.S.C. §1983.

2 i. RESPONDENTS, and each of them, intentionally and unlawfully, by means of
3 force, excessive force, deadly force, duress, menace, threats, and use of official authority,
4 restrained, detained, arrested, and/or utilized excessive and deadly force upon DECEDENT
5 without necessity or justification. DECEDENT was restrained, detained, arrested, and confined
6 for an appreciable amount of time, tased and shot multiple times against his will, proximately
7 causing the death of DECEDENT and subsequent damages to Claimants.
8

9 4. GENERAL DESCRIPTION OF THE INDEBTEDNESS OBLIGATION,
10 INJURY, DAMAGE OR LOSS AS FAR AS KNOWN AT TIME OF PRESENTATION;
11

12 a. As to Claimants and DECEDENT, damages include, but are not limited to
13 the following:

- 14 1. Wrongful Death of Jesse Garcia;
- 15 2. Survival Action;
- 16 3. Violation of Civil Rights;
- 17 4. Personal Injuries;
- 18 5. Emotional Distress;
- 19 6. General Damages;
- 20 7. Special Damages;
- 21 8. Economic Damages;
- 22 9. Non-Economic Damages;
- 23 10. Punitive Damages; and
- 24 11. Attorney fees and costs.
- 25
- 26

6

NOTICE OF GOVERNMENT CLAIM PURSUANT
TO GOVERNMENT CODE SECTION 910

RESPONDENTS; and DOE EMPLOYEES 1 through 50, inclusive.

Amount claimed exceeds \$10,000.00. This is not a limited civil case. Jurisdiction is in the Tulare County Superior Court.

LAW OFFICE OF DEREK P. WISEHART

Derek P. Wischart, Attorney
for Claimants.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF TULARE

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to the within action; my business address is 2330 W. Main Street, Visalia, California 93291.

On May 30, 2023, I served the foregoing **CITY OF TULARE CLAIM FORM** on all interested parties, by placing a true copy thereof enclosed in a sealed envelope and addressed as follows:

Risk Management
City of Tulare
411 E. Kern Ave.
Tulare, CA 93274

☒ **By Personal Service** - I delivered such envelope by hand to the addressee.

☐ **By Mail** - I deposited such envelope with the United States Postal Service, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Visalia, California. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ **By Express Service Carrier** - I deposited in a box or other facility regularly maintained by Federal Express, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents in an envelope designated by the said express carrier, with delivery fees paid or provided for.

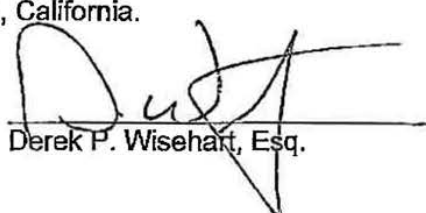
☐ **By Facsimile** - I transmitted from a facsimile transmission machine whose telephone number is 559/636-9476, the afore-described document(s), and a copy of this declaration to the above interested parties at the listed facsimile transmission telephone number.

☐ **By Electronic Service:** I sent the afore-described document(s) from email address dnorys@dwiseshartlaw.com to the person(s) at the email addresses listed above. I did not receive within a reasonable time after transmission any electronic message or other indication that the transmission was unsuccessful.

1 X (State) I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

2
3 _____ (Federal) I declare that I am employed in the office of a member of the Bar of
this Court at whose direction the service was made.

4 Executed on May 30, 2023, at Visalia, California.

5
6 
Derek P. Wisehart, Esq.





NOTICE OF REJECTION OF CLAIM

CLAIMANT: Estate of Jesse Garcia; Amy Smith obo Jryden G., a minor; Jesse Garcia (Father); Monica Garcia (Mother) , FR 100720

ADDRESS: c/o Derek P. Wischart, Attorney
2330 W. Main Street
Visalia, CA 93291

NOTICE IS HEREBY GIVEN that the Claim which you presented to City of Tulare on May 30, 2023 was rejected on June 20, 2023.

WARNING

Subject to certain exceptions, you have six (6) months from the date this Notice of Rejection of Claim was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code Section 945.6.)

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This Notice of Rejection of Claim applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Sections 128.5 et seq. and 1038 of the California Code of Civil Procedure, the City of Tulare will seek to recover all costs of defense in the event a legal action is filed in the matter and it is determined that the action was not filed in good faith and with reasonable cause, or as otherwise determined to justify the imposition of attorney's fees and costs of suit pursuant to such sections, as well as any other sections or laws inuring to the benefit of the City of Tulare, its officers, officials, employees, agents, or representatives.

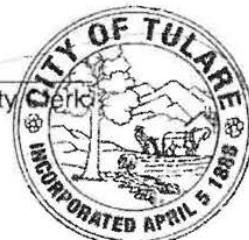
PROOF OF SERVICE

On June 21, 2023, I served the within NOTICE OF REJECTION OF CLAIM on the claimant by placing a true copy thereof enclosed in a sealed envelope in the outgoing mail addressed as requested by the claimant.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Tulare, California, on June 21, 2023.

Melissa Hermann

Chief Deputy City Clerk



COUNTY OF TULARE
OFFICE OF THE COUNTY COUNSEL RISK MANAGEMENT



County Counsel
Jennifer M. Flores

Deputy Risk Managers
Rob Anderson
Nancy Chavira

Risk Manager
Susan L. Cox

June 27, 2023

Derek P. Wischart, Esq.
Law Offices of Derek P. Wischart
2330 W. Main Street
Visalia, CA 93291

RE: Estate of Jesse Garcia, Amy Smith obo Jryden G., a minor, Jesse Garcia, and Monica Garcia
claims against the County received by the Clerk of the Board on May 30, 2023.

Dear Mr. Wischart:

Please be advised that your claim has been formally rejected. Enclosed you will find the Notice of Rejection of Claim. Should you have any questions or wish to correspond, please contact me directly.

Respectfully,

A handwritten signature in cursive script, appearing to read "Elisa Alanis", is written over a horizontal line.

Elisa Alanis
Risk Management Analyst

Enclosure: Notice of Rejection of Claim

EA/6/27/2023/RISK-2023368/1996726

2900 W. Burrel Avenue, County Civic Center, Visalia, CA 93291-4525
Telephone: (559) 636-4950 Fax: (559) 713-3719
www.tularecountycounsel.org

Garcia, Jesse, et al. v. County of Tulare
June 27, 2023
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**COUNTY OF TULARE
NOTICE OF REJECTION OF CLAIM**

Notice is hereby given that the Claim which you presented to Tulare County Board of Supervisors on May 30, 2023, was rejected on June 27, 2023.

WARNING

Subject to certain exceptions, you have six (6) months from the date of this notice of rejection or partial rejection was personally delivered or deposited in the mail to file a court action on this Claim. (See Government Code, section 945.6).

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This Notice of Rejection of Claim applies only to claims under state law and shall not extend any time limits as may be imposed upon the claimant(s) for pursuit of the claimant(s)' rights under federal laws, statutes, or other sources of rights of recovery in favor of claimant(s).

Please also be advised that pursuant to Section 128.5 et seq. and 1038 of the California Code of Civil Procedure, the County of Tulare will seek to recover all costs of defense in the event a legal action is filed on the matter and it is determined that the action was not filed in good faith and with reasonable cause.

Garcia, Jesse, et al. v. County of Tulare
June 27, 2023
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.

COUNTY OF TULARE)


I am employed in the County of Tulare, State of California. I am over the age of eighteen (18) years and not a party to this action; and, my business address is 2900 W. Burrell Ave., Visalia, CA 93291.

On this date, I served the following documents: **Notice of Rejection** on the parties to this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Derek P. Wischart, Esq.
Law Offices of Derek P. Wischart
2330 W. Main Street
Visalia, CA 93291

- ☒ **(BY MAIL)** I am "readily familiar" with The County of Tulare's practice of collection and processing correspondence by mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage fully prepaid at Visalia, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **(BY TELECOPIER)** With the addressee(s)' consent and agreement, I caused such document to be delivered by telecopy transmission to the addressee(s).
- ☐ **(BY PERSONAL DELIVERY)** I caused such envelope to be delivered by hand to the addressee(s).
- ☐ **(BY FEDERAL EXPRESS OR UPS NEXT DAY SERVICE)** I caused such envelope to be delivered to Federal Express or UPS with a fully prepaid airbill/invoice for next business day delivery to the addressee(s).

Executed on June 27, 2023, at Visalia, CA.


Mandy Garza

cc: Claim File